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ATTORNEY FOR PLAINTIFF
United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

**UNITED STATES OF
AMERICA,**

Plaintiff,

vs.

**FRANK'S SHORT STOP and
FRANK NGO**

Defendants.

CV-13-136 -BLG-SEH-CSO

AMENDED COMPLAINT

The United States, by and through Michael W. Cotter, United States Attorney for the District of Montana, and Victoria L. Francis, Assistant U.S. Attorney, hereby files this Complaint seeking damages on behalf of the United States Postal Service (USPS). The United States alleges as follows:

1. This Court has jurisdiction of this action for the reason that the USPS is the party plaintiff under 39 U.S.C. §409(a).

2. Venue is proper in this district under 28 U.S.C. Section 1391 because a substantial part of the events or omissions giving rise to the claim occurred in this district and the Defendants reside in this district.

3. The Miles City Post Office is located at 106 North 7th Street, Miles City, Montana adjacent to the Conoco Short Stop, a/k/a Frank's Short Stop, a gasoline service station owned and or operated by the named Defendants.

4. On or about November 10, 2010, USPS personnel were advised that gasoline vapors had intruded into the USPS postal facility located in Miles City. On information and belief approximately 9700 gallons of fuel was released from fuel tanks owned and operated by Defendants'

resulting in the migration of the fuel and vapors which caused damage to the USPS.

5. The Montana Department of Environmental Quality (MDEQ), utilizing its contractor, Olympus Technical Services undertook measures to mitigate the vapors on USPS property. On or about November 18, 2010, the Miles City Fire Chief and MDEQ advised the USPS to evacuate the USPS facility. Plaintiff's employees and customers were complaining about the gas fumes and vapor levels were increasing. On that same date the USPS relocated its operations and entered into a temporary lease space effective November 18, 2010.

6. The USPS has incurred costs and damages due to the petroleum release emanating from Defendants' fuel station, including costs related to a temporary relocation of USPS operations, rent for temporary facilities, construction costs for configuration of the temporary quarters in order to meet postal requirements, costs for a USPS consultant to oversee remediation efforts and to ensure compliance with laws and policies that are applicable to the USPS and other damages.

COUNT 1

7. Plaintiff realleges and incorporates paragraphs 1 through 6 above as restated herein.

8. Defendants, by and through their employees and agents, owe a duty of care to neighboring property owners and lessees, to properly maintain and operate fuel storage tanks. Defendants breached that duty and negligently failed to maintain and inspect fuel storage tanks causing the emission of toxic fuels and vapors from Defendants' property resulting in damage to Plaintiff, including, but not limited to, relocation costs, monitoring costs, and temporary leasing and construction costs in an amount to be determined at trial.

COUNT II

9. Plaintiff realleges and incorporates paragraphs 1 through 8 above as restated herein.

10. The fuel leak and related vapors from storage tanks owned and operated by Defendants migrated from Defendants' property due to negligent or reckless conduct, and as a result of failure to control abnormally dangerous substances, resulting in the interference with the use and enjoyment of property under the control of the USPS in Miles

City, Montana. The harmful vapors and fuel migration, caused damage to Plaintiff including, but not limited to, relocation costs, monitoring costs, temporary leasing and construction costs, in an amount to be determined at trial.

COUNT III

11. Plaintiff realleges and incorporates paragraphs 1 through 10 above as restated herein.

12. Defendants negligently trespassed on the property interest of the USPS when the gas station and fuel owned and or under the control of Defendants leaked and migrated causing fuel and fuel vapors to trespass and invade the premises under the legal possession of the USPS, resulting in damages including, but not limited to, relocation costs, monitoring costs, temporary leasing and construction costs, in an amount to be determined at trial.

WHEREFORE, Plaintiff respectfully requests that the Court grant the following:

1. Damages for negligence, nuisance and trespass in an amount to be determined at trial;

2. That the Court award Plaintiff all costs and expenses of this action;

3. For such other and further relief as the Court deems appropriate.

DATED this 13th day of January, 2014.

MICHAEL W. COTTER
United States Attorney

/s/VICTORIA L. FRANCIS
Assistant U.S. Attorney
Attorney for Plaintiff